IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE J.B.KOSHY
&
THE HONOURABLE MRS.JUSTICE K. HEMA

WEDNESDAY, THE 17TH OCTOBER 2007 / 25TH ASWINA 1929

MFA.No. 1019 of 2002()

(WCC.63/1995 OF COMMISSIONER FOR WORKMEN'S COMPENSATON, KOTTAYAM)
.....

APPELLANT: 2ND OPP.PARTY

NATIONAL INSURANCE COMPANY LTD.,
PATHANAMTHITTA.

BY ADV. SRI.RAJAN P.KALIYATH

RESPONDENTS: APPLICANTS AND OPP.PARTY-1.
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1. SADANANDAN C.S., S/O. AYYAPPAN SANKARAN,
KATHAKATTU HOUSE, MUKKADA POST, KARIKKATTOOR VIA,
KOTTAYAM DISTRICT.

2. THE SECRETARY, PRIYADARSINI MOTORS,
THIRUVALLA, PATHANAMTHITTA DISTRICT
SC/ST CO-OPERATIVE SOCIETY, THIRUVALLA.

R1 BY ADV. SRI.V.P.REGHURAJ

THIS MISC. FIRST APPEAL HAVING BEEN FINALLY HEARD ON 17/10/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

ORDER ON C.M.P.6273/02 IN M.F.A.1019/2002

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DISMISSED.

ID/- J.B. KOSHY, JUDGE.

ID/- K. HEMA, JUDGE.

17.10.2007

// TRUE COPY //

P.S. TO JUDGE.

J.B. KOSHY & K. HEMA, JJ.

M.F.A.No. 1019 of 2002

Dated this the 17th day of October , 2007.

JUDGMENT

Koshy, J:

This appeal is filed by the Insurance Company challenging the award of compensation by the Commissioner for Workmen's Compensation. First respondent, a workman employed by the second respondent sustained injury in an accident that arose during the course of employment. As a result of the accident, he sustained sprain of the ligaments and there was also tenderness to lumbar vertebra and there was limitation of movements. Additional spinal support was also required. The doctor certified that he required bed rest for 60 days and temporary disability amounted to 70%. It is the contention of the Insurance Company that at the maximum half-monthly compensation for 60 days can be given for the 70% temporary disability. No other treatment certificate was produced. There is no assessment of permanent disability. It is also pointed out that even though Commissioner had assessed 70% disability, after the accident he got employment in K.S.E.B. It is contended that even if he has walking difficulties, under Section 4(1)(c)(ii), when the injury is not scheduled injury, loss of earning capacity should be assessed by the Commissioner on the basis of the medical practitioner's certificate. There was only temporary disability and he needed rest for 60 days.

2. At the time of admission, this Court has allowed the respondent-applicant to withdraw 1/3rd of the compensation. Considering the fact that he has even now difficulties for walking, we are of the opinion that there is some permanent disability. In the facts and circumstances of the case, the amount already received by the applicant need not be taken back as that is awarded as compensation amount with interest. Half-monthly contribution if awarded for 60 days only comes to Rs.2000/-. Since the applicant has difficulties for walking, we are of view that the amount already disbursed shall not be recovered by the Insurance Company. However, excess amount, deposited by the Insurance company shall be refunded to the Insurance company.

Appeal is partly allowed.

J.B.KOSHY,
JUDGE.

K. HEMA,
JUDGE.

Krs.

J.B. KOSHY & K. HEMA, JJ.

M.F.A.No. 1019 of 2002

Dated this the 17th day of October , 2007.

JUDGMENT